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Public Service Commission of Wisconsin  
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**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of Wisconsin Electric Power Company, Wisconsin Gas LLC,  
and Wisconsin Public Service Corporation for Declaratory Ruling and  
Approval Regarding Long-Term Natural Gas Storage and Transportation  
Arrangements

5-DR-112

**FINAL DECISION**

This is the Final Decision on the February 3, 2017, application of Wisconsin Electric Power Company (WEPCO or WE-GO), Wisconsin Gas LLC (WG), and Wisconsin Public Service Corporation (WPSC) (collectively, applicants) for declaratory rulings regarding long-term natural gas storage and transportation arrangements. The requested relief is GRANTED, subject to the conditions in this Final Decision.

**Background**

On February 3, 2017, the applicants petitioned for declaratory rulings concerning the reasonableness and prudence of a proposed natural gas storage and transportation transaction (the proposed transaction). ([PSC REF#: 297633](#), confidential; [PSC REF#: 297634](#), public.) The applicants stated that the proposed transaction will allow them to secure one-third of their natural gas storage and associated transportation needs, reduce reliance on shorter-term leases and a dominant provider of storage services, and deliver \$200 million in net present value (NPV) savings to customers over the life of the proposed transaction. The applicants further stated that the proposed transaction is appropriate and timely because the demand and cost for natural gas

storage and interstate transportation will rise in the near future since the demand for natural gas is increasing for electric generation, exports, and liquefied natural gas production.

### **Gas Storage Agreements**

Under the proposed transaction, the applicants' holding company, WEC Energy Group, Inc. (WEC), will acquire Bluewater Natural Gas Holding, LLC (BGH), which owns underground natural gas storage facilities in Michigan, for a total acquisition cost of \$230 million (\$225 million purchase price plus \$5 million in transaction costs). The applicants are familiar with BGH's Bluewater facility because they currently lease much of its capacity. The Bluewater facility is a relatively new facility that is less likely to require major investments in the near term. Once WEC acquires BGH, the applicants initially proposed to enter into long-term, 60-year storage service agreements with BGH's subsidiary, Bluewater Natural Gas Storage LLC (BGS),<sup>1</sup> under an existing Federal Energy Regulatory Commission (FERC) approved market-based rate tariff, on terms comparable to ownership that allocate storage capacity to each applicant in proportion to its peak-day demands. During the proceeding, the applicants proposed to enter into 30-year storage service agreements with BGS, as opposed to the 60-year term initially proposed. The proposed transaction is structured in this manner to insulate the applicants from the risk of owning the Bluewater facility and to avoid the need for BGS to cancel its market-based rate tariff and to establish new market-based rate tariffs with FERC.

Typical storage contract rates consist of firm storage reservation charges and firm injection and withdrawal charges. The applicants negotiated a base reservation charge based on

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<sup>1</sup> Where the application refers to BGH and BGS collectively, this Final Decision uses these abbreviations somewhat interchangeably as well.

various annual costs and revenues. ([PSC REF#: 300793](#); [PSC REF#: 299840](#) at 4.) To the extent there is a difference between the forecasted estimate and actual costs, both positive and negative, a true-up component mechanism will take this difference and apply it to the base rate as a true-up surcharge or credit. ([PSC REF#: 299840](#) at 4.) This arrangement provides the applicants the flexibility to operate the storage facility as if they owned it. The total annual estimated costs and revenues included in the base reservation charge consist of the following BGS annual cost components:

- Bluewater purchase (return on and of investment)
- Book depreciation
- Base gas (recoverable)
- Interest expense
- Return on equity
- Income tax
- Property tax
- Operation and maintenance (O&M), and capital expenditures<sup>2</sup>
- Existing storage revenue
- Off-system contracts
- Off-system park and loan contracts<sup>3</sup>

([PSC REF#: 300793](#).) Any existing third-party storage revenue will be passed along to the applicants and subtracted from the base reservation charge. ([PSC REF#: 299838](#).)

The applicants proposed that the Commission will have an opportunity to review and approve recovery in rates of material capital expenditures, which the applicants initially defined

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<sup>2</sup> Capital expenditures would not be recovered entirely in the year they are incurred, but instead capitalized.

<sup>3</sup> In some years there may be revenues for the park and loan arrangement, but historically for the Bluewater facility the park and loan has been an expense. Therefore, applicants have forecasted this as an expense over the 60 years.

as those in excess of \$7.5 million ([PSC REF#: 299840](#) at 5), but later defined as \$2.5 million.

During the proceeding, the applicants further proposed that they would revise the gas storage agreements to provide that upon the applicants' approval of a significant capital expenditure in excess of \$2.5 million, the applicants' obligation to compensate BGS for the expenditure will be limited to BGS's actual expenditure or the approved amount plus 10 percent, whichever is less.

### **Gas Transportation Contracts**

The Bluewater facility is well connected to interstate pipelines. Transportation from the Bluewater facility to the Guardian Pipeline (Guardian) to which the applicants are connected is available at very low cost. The applicants propose to use firm natural gas transportation capacity currently available on the Vector Pipeline system (Vector) to deliver gas to and from the Bluewater facility. Gas withdrawn from the Bluewater facility will be transported to Vector's interconnect with Guardian in Joliet, Illinois. The applicants currently contract nearly half of their firm storage and associated transportation requirements from ANR Pipeline Company (ANR). ([PSC REF#: 297634](#) at 9.) The current ANR contracts are cost-based bundled storage and transportation services, most of which are at or near ANR's maximum tariff rate. (*Id.*, Attachment 5 at 20-24.) The applicants also currently contract over 90 percent of Guardian's firm transportation capacity to bring gas into Wisconsin. The applicants lastly have existing transportation contracts with Vector, which interconnects with Guardian. The applicants proposed to utilize their existing Vector contacts, as well as enter into new long-term, firm transportation rates for 20 years, to facilitate gas storage withdrawals. (*Id.*, Attachment 3 at 3, Attachment 5 at 16-17.) The contracts the applicants have negotiated with Vector for withdrawals include a ramp up of firm transportation capacity as additional Bluewater storage

comes available. (*Id.*, Attachment 3 at 3.) At such time when the withdrawal contracts expire, the applicants will have negotiation rights for extension upon expiration. (*Id.*, Attachment 5 at 16.) The applicants also proposed to contract with Vector for gas storage injections. Vector provides the applicants with the ability to source gas from either the Joliet Hub or the Dawn Hub. These contracts for injection are reasonable as they will allow the applicants flexibility to source gas from whichever hub is the least expensive.

### **Economic Analysis**

As discussed below, the applicants conducted an economic analysis to derive the proposed transaction's \$200 million in NPV savings to customers. The applicants compared the costs of the proposed transaction to the costs they would incur using traditional portfolios of services on a shorter-term basis. The cost savings are threefold. The applicants will save costs on storage and transportation, and the proposed transaction will allow the applicants to quickly adapt to market conditions. The applicants can also earn revenue by offering services to third parties. The upfront cost of acquiring the Bluewater facility will be the highest in the first year and will then decrease over time as it is depreciated. Thus, the proposed transaction's costs will exceed its savings in the first few years.

### **Recovery of the Proposed Transaction's Costs**

The applicants proposed to recover firm storage reservation charges and transportation contract charges through their respective purchase gas adjustment clauses (PGAC). Using the existing PGAC mechanism to recover all of the applicants' charges allows one-for-one recovery of all costs. One-for-one gas cost recovery methods permit local distribution companies (LDCs) to price gas supplies aggressively for competitive markets without fear of under recovery of gas

costs. *See Order in GCRM Docket*, Docket No. 5-GI-106, 1996 WL 34720600, at \*15 (Pub. Serv. Comm'n of Wis. Nov. 8, 1996). A gas cost recovery mechanism, such as the PGAC, should "be designed in a way that the sharing of risk does not motivate actions that significantly and adversely affect the goals associated with reliable service and reasonable gas costs to customers." *Id.* at \*13. The applicants proposed to initially recover their net storage costs from retail customers based upon annual demand requirements. The applicants must serve all of their customer load and balance all gas supplies delivered to their distribution system.

### **Requested Declaratory Rulings**

The applicants' petition for declaratory ruling requested two declarations from the Commission under Wis. Stat. § 227.41. First, the applicants requested that the Commission declare that it is reasonable and prudent for the applicants to enter into the long-term storage service and interstate gas transportation agreements. Second, the applicants requested that the Commission declare that it is reasonable and prudent for the applicants to recover their allocated portions of the costs to acquire, operate, and maintain the Bluewater facility through their PGACs. The applicants also requested that the Commission approve an amendment to the WEC Affiliated Interest Agreement to ensure that BGH has access to the full range of services available within WEC through its service company and the operating companies. The Commission addresses the applicants' request to amend the WEC Affiliated Interest Agreement in a separate docket, docket 5-AU-112.

### **Procedural History**

Commission staff issued a number of data requests to which the applicants have responded. These data requests concern: (1) rates and cost allocation ([PSC REF#: 299839](#),

confidential; [PSC REF#: 299840](#), public); (2) procedural and jurisdictional matters ([PSC REF#: 299835](#)); (3) business and contractual matters ([PSC REF#: 299836](#)); (4) economic and financial matters ([PSC REF#: 299837](#)); (5) salvage value, seasonal spreads, and reservation fees ([PSC REF#: 299838](#)); and (6) miscellaneous matters ([PSC REF#: 300792](#); [PSC REF#: 300793](#); [PSC REF#: 300794](#); [PSC REF#: 300795](#); [PSC REF#: 300798](#), confidential; [PSC REF#: 300799](#), public; [PSC REF#: 300796](#); [PSC REF#: 300797](#)).

On March 17, 2017, the applicants submitted a brief on jurisdiction and scope. ([PSC REF#: 299529](#), confidential; [PSC REF#: 299530](#), public.) On March 23, 2017, Commission staff issued an agenda memorandum addressing whether the Commission should grant the petition and issue a notice of proceeding setting the matter for hearing or deny the petition and issue an order containing a brief statement as to the reasons why. ([PSC REF#: 299828](#).) On March 24, 2017, the Commission issued an Order Opening Docket and Notice of Prehearing Conference. ([PSC REF#: 299966](#).)

The Order Opening Docket and Notice of Prehearing Conference proposed three issues: (1) whether it is reasonable, prudent and in the public interest for the applicants to enter into long-term storage service agreements and related interstate gas transportation contracts in connection with the Bluewater facility; (2) whether it is reasonable, prudent and in the public interest for applicants to recover their allocated portions of the full cost of acquiring the Bluewater facility and all of the reasonable and prudent expenses of operating and maintaining the facility through their respective PGACs based upon annual demand requirements; and (3) whether it is reasonable, necessary and in the public interest to impose conditions upon the applicants in connection with their decision to enter into the proposed agreements and contracts.

Commission staff, the applicants, and the intervenors<sup>4</sup> stipulated to these proposed issues, as well as a procedure and schedule for disposition of this proceeding. ([PSC REF#: 300956](#).)

On May 1, 2017, Commission staff issued a second agenda memorandum for comment. ([PSC REF#: 302107](#), confidential; [PSC REF#: 302108](#), public). On May 15, 2017, the applicants, CUB, WIEG, and ICE submitted comments on Commission staff's second agenda memorandum. ([PSC REF#: 303135](#); [PSC REF#: 303137](#); [PSC REF#: 303141](#), confidential; [PSC REF#: 303142](#), public; [PSC REF#: 303143](#).) A public and party hearing was held on May 23, 2017. ([PSC REF#: 303984](#).) Commission staff and CUB submitted supplemental comments on May 30, 2017. ([PSC REF#: 303914](#), [PSC REF#: 303932](#).) To assist in the Commission's evaluation and discussion, Commission staff submitted a Decision Matrix as Appendix A to its supplemental comments. The party positions were inserted by Commission staff based upon the previously filed comments of the parties. On June 2, 2017, the applicants submitted reply comments. ([PSC REF#: 304180](#), confidential; [PSC REF#: 304181](#), public.) On June 8, 2017, the applicants submitted a supplement to Commission staff's Decision Matrix to reflect the applicants' reply comments, as well as all other information in Commission staff's Decision Matrix. ([PSC REF#: 304511](#).) The Commission discussed this matter at its open meeting of June 15, 2017.

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<sup>4</sup> The intervenors are the Citizen's Utility Board (CUB), Wisconsin Industrial Energy Group (WIEG), ANR Pipeline Company (ANR), and Initiative for Competitive Energy, Inc. (ICE). ([PSC REF#: 298721](#); [PSC REF#: 298795](#); [PSC REF#: 298814](#); [PSC REF#: 300896](#).) The parties, for purposes of review under Wis. Stat. §§ 227.47 and 227.53, are listed in Appendix A.



### **Findings of Fact**

1. As conditioned by this Final Decision, it is reasonable and prudent for the applicants to enter into the long-term storage service and interstate gas transportation agreements based on the facts established in the Background and Opinion sections of this Final Decision.

2. It is reasonable to impose a condition that the declaratory rulings issued in this Final Decision are strictly based on the set of facts established in this proceeding, are only valid to the extent that the set of facts remains in place, and are void to the extent that the set of facts changes.

3. It is reasonable to require the applicants to include provisions in the storage service agreements stating that the applicants have entered into them with their affiliate BGS or BGH voluntarily.

4. It is reasonable to prohibit the applicants from asserting that the Commission is preempted from assessing the reasonableness and prudence of the applicants' decision to enter into the service storage agreements with BGS or BGH or related matters in the future.

5. It is reasonable to require the applicants to file with the Commission the storage service agreements with their affiliate BGS or BGH and obtain approval from the Commission under Wis. Stat. § 196.52.

6. It is reasonable to require the applicants to amend the gas storage contracts to shorten the term to 30 years. The recovery of the Bluewater investment shall continue to be based on a 60-year depreciable life.

7. It is reasonable to require the applicants to amend the gas storage agreements to provide their approval of an annual Bluewater O&M cost budget, which shall be reflected in each of the applicants' annual gas supply plans filed with the Commission.

8. It is reasonable to require the applicants to submit capital expenditures for the Bluewater facility that exceed \$2.5 million to the Commission for approval, and to amend their gas storage agreements to provide that upon their approval of a significant capital expenditure exceeding \$2.5 million, the applicants' obligation to compensate BGS for the expenditure will be limited to BGS's actual expenditure or the approved amount plus 10 percent, whichever is less.

9. It is reasonable to require the applicants to periodically submit information that will allow Commission staff to verify that the proposed transaction is in fact creating customer savings.

10. It is reasonable to require the applicants to recover their costs incurred under the gas storage agreements through their PGACs until their next base rate case, which at that time the costs will be placed in base rates.

11. It is reasonable for the applicants to recover the proposed transaction's costs only from sales customers now, but the Commission retains the authority to require the applicants to recover costs from transportation customers in the future.

### **Conclusions of Law**

1. As conditioned by this Final Decision, the Commission has jurisdiction to issue this declaratory ruling pursuant to Wis. Stat. §§ 196.02, 196.03, 196.395, and 227.41, the Natural Gas Act, *Pike Cnty. Light and Power Co. v. Pa. Pub. Util. Comm'n*, 465 A.2d 735 (1983), and *Ky. W. Va. Gas Co. v. Pa. Pub. Util. Comm'n*, 837 F.3d 600 (3d. Cir. 1988).

2. The Commission may impose any term, condition, or requirement necessary to protect the public interest pursuant to Wis. Stat. §§ 196.02 and 196.395.

## **Opinion**

### **Commission's Jurisdiction and Discretion**

As noted above, the applicants requested declaratory rulings pursuant Wis. Stat. § 227.41, which states that “any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it.” The Commission has previously exercised its discretion and applied its ratemaking authority under Wis. Stat. §§ 196.02 and 196.03 to issue declaratory rulings concerning the reasonableness and prudence of proposed utility investment. *See, e.g., In re Wis. Elec. Power Co.*, Docket No. 6630-DR-104, 2001 WL 1671064 (Pub. Serv. Comm’n of Wis. Oct. 17, 2001); *In re Wis. Pub. Serv. Corp.*, Docket No. 6690-DR-105, 2002 WL 32083055 (Pub. Serv. Comm’n of Wis. Nov. 8, 2002); *In re Wis. Pub. Serv. Corp.*, Docket No. 6690-DR-107, 2003 WL 22683461 (Pub. Serv. Comm’n of Wis. Nov. 12, 2003); *In re Kewaunee Nuclear Power Plant*, Docket No. 5-EI-136, 2005 WL 937257 (Pub. Serv. Comm’n of Wis. Apr. 21, 2005). The Commission finds that issuing the declaratory ruling regarding the reasonableness and prudence of the proposed transaction falls within its discretionary authority under Wis. Stat. §§ 196.02, 196.03, and 227.41, as well as prior Commission decisions. Based upon the instant record discussed below and the unique facts and circumstances of this case, granting the requested declaratory ruling now adds certainty needed to effectuate the proposed transaction, which is proposed to save ratepayers in the future. However, because the Commission may only issue a declaratory ruling concerning a “state of facts,” the Commission

finds it reasonable to impose a condition that the declaratory rulings issued in this Final Decision are strictly based on the set of facts established in this proceeding, are only valid to the extent that the set of facts remains in place, and are void to the extent that the set of facts changes.

In addition to comporting with Wisconsin law, issuing declaratory rulings regarding the prudence of the proposed transaction, with the conditions discussed below, falls within the authority left to the Commission under the Natural Gas Act. In their brief on jurisdiction and scope, the applicants addressed the applicability of *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354 (1988). There, the Court held that the Mississippi Commission was preempted from reviewing the prudence of a retail utility's participation in a FERC jurisdictional agreement allocating the capacity and costs of a nuclear power plant between the retail utility and its affiliates, including a wholesale generating company and other retail utilities. The applicants asserted that *Mississippi* is inapplicable because each of the applicants will enter into separate agreements with BGH, as opposed to a FERC jurisdictional allocation agreement among themselves and BGH. The applicants stated that the proposed transaction is instead governed by the principle established in *Pike Cnty. Light and Power Co. v. Pa. Pub. Util. Comm'n*, 465 A.2d 735 (1983), and *Ky. W. Va. Gas Co. v. Pa. Pub. Util. Comm'n*, 837 F.3d 600 (3d. Cir. 1988). The principle established in these cases is that where a retail utility has a choice among suppliers, the Commission, rather than FERC, may evaluate whether the retail utility was prudent in selecting a particular supplier among available alternatives.

The Commission finds that it is reasonable to impose several conditions to confirm the Commission's jurisdiction in this proceeding as defined by the Natural Gas Act and applicable case law. First, to ensure that the applicants have a choice among suppliers, as the applicants

claimed, the Commission finds that is reasonable to require provisions in the storage service agreements stating that the applicants have entered into them with their affiliate BGS or BGH voluntarily. Second, the Commission finds that it is reasonable to prohibit the applicants from asserting that the Commission is preempted from assessing the reasonableness and prudence of the applicants' decision to enter into the service storage agreements with BGS or BGH or related matters in the future. Last, the applicants are required to file with the Commission the storage service agreements with their affiliate BGS or BGH and obtain approval from the Commission under Wis. Stat. § 196.52.<sup>5</sup> In sum, all of the foregoing conditions are intended to ensure that the proposed transaction conforms to Wisconsin and federal law, that the Commission's declaratory rulings issued in this Final Decision are limited to the proposed transaction as the applicants presented to the Commission, and that the proposed transaction receives any necessary Commission approval prior to the applicants incurring charges thereunder.

### **Reasonableness and Prudence of the Proposed Transaction**

As noted above, the applicants requested that the Commission declare it reasonable and prudent for the applicants to enter into the proposed transaction. With the conditions imposed below, the Commission finds that it is reasonable and prudent for the applicants to enter into the proposed transaction based on the following discussion of the natural gas industry and the economic savings the applicants can achieve through the proposed transaction.

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<sup>5</sup> For instance, in docket 5-AE-208, WEPCO and WPSC sought Commission approval of a purchase power agreement between the affiliated public utilities under Wis. Stat. § 196.52, despite the fact that they also sought FERC approval under the affiliate abuse standard established in *Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*). Under *Edgar*, FERC "must ensure that the buyer has chosen the lowest cost supplier from among the options presented, taking into account both price and nonprice terms (*i.e.*, that it has not preferred its affiliate without justification)." *Id.*

### **Natural Gas Industry and Proposed Transaction Background**

Natural gas storage is a crucial component of the reliable and low-cost natural gas service that the applicants provide to their customers. Wisconsin's geology is not suitable for the development of underground natural gas storage facilities because the state lacks large underground cavities capable of storing natural gas under pressure, such as depleted oil or gas reservoirs, aquifers or salt caverns. Wisconsin is the only upper Midwest state that lacks gas storage capacity. As a result, the applicants' access to natural gas storage is limited to out-of-state, third-party controlled resources that are available through interstate gas pipeline interconnections. The applicants currently rely primarily on ANR tariffed services for a significant portion of their storage and associated transportation needs. The applicants use storage to provide reliable and reasonably priced natural gas service to their customers. The ability to transport gas for injection into storage, later to be withdrawn for delivery to their local distribution systems, serves a number of important roles for natural gas utilities generally.

For example, natural gas storage: (1) provides a flexible source of firm gas supply to meet peak day demand in the winter and spring shoulder months; (2) balances demand with supply; (3) hedges against price volatility; (4) reduces costs for long-haul pipeline capacity; (5) diversifies supply and enhances reliability. Currently, the applicants are dependent on out-of-state providers, namely ANR as noted above, for natural gas storage and the pipeline capacity required to transport the natural gas to and from storage. Further, the amount of storage capacity available in the market, particularly in the Midwest, is expected to remain constant. There has been no expansion of storage in the Midwest in the last 5 years and none is underway now.

Given these concerns, the applicants can obtain more direct control of natural gas storage and associated transportation on a long-term basis through the proposed transaction. The applicants have access to alternatives to ANR's tariffed storage and transportation services by virtue of their interconnections with Guardian, which was constructed in eastern Wisconsin in the 2000s as an alternative to ANR. The Commission approved the applicants' construction of laterals to connect with Guardian as a second source of pipeline capacity for the purposes of meeting growing demand, enhancing reliability, increasing the utilities' diversity of suppliers of pipeline-related services, and establishing competition for interstate pipeline and third party services. Through Guardian, the applicants have access to the Vector pipeline system, which in turn connects to a number of underground natural gas storage facilities in eastern Michigan. The current and expected pricing of the transportation capacity needed to inject and withdraw natural gas in and out of storage in Michigan via the Vector and Guardian pipelines is significantly lower than ANR's tariffed transportation service.

The Bluewater facility is a relatively new facility located in southeastern Michigan. The applicants are familiar with this facility, as they currently lease about three-quarters of its working gas. The applicants asserted that compared to older underground gas storage facilities, the Bluewater facility's more recent design and construction renders it capable of more flexible operations to help protect the applicants and their customers from changing market conditions. The Bluewater facility is less likely to require major investments in the near term to modernize and comply with new safety and environmental requirements. The Bluewater facility is well connected to interstate pipelines and multiple supply basins, providing access to both the Joliet

and Dawn Hubs and the Appalachian shale gas basin. Direct transportation paths from the Bluewater facility to Guardian are currently available at very low cost.

As noted above, WEC will acquire BGH in order to insulate the applicants from the risk of owning the Bluewater facility and to avoid the need for BGS to cancel its market-based rate tariff and the need for the applicants to establish new market-based rate tariffs with FERC. The total acquisition cost of \$230 million (\$225 million purchase price plus \$5 million in transaction costs) represents a fair market value for Bluewater. The applicants originally proposed to enter 60-year storage contracts with BGH upon the acquisition closing. However, during the proceeding, the applicants offered to reduce the term of the storage contracts to 30 years. These contracts will represent about 30 percent of the applicants' total gas storage portfolio, the remainder of which will be a mixture of cost-based and market-based arrangements of short and medium term, resulting in diversification that will provide the applicants and their customers with a level of protection from the scarcity of availability and cost of these services. The storage agreements will provide the applicants access to gas storage on terms comparable to ownership. The applicants will be responsible for the full cost of acquiring BGH and operating and maintaining the Bluewater facility over the contract term, including the return on and of the price by which WEC acquired the Bluewater facility.

Securing long-term access to gas storage allows the applicants to secure significant savings through the execution of new lower-cost and long-term gas transportation contracts for delivery of gas between the Bluewater facility and Wisconsin. The applicants will use firm natural gas transportation capacity currently available on Vector to deliver gas to and from the Bluewater facility, and gas withdrawn from the Bluewater facility will be transported to Vector's



interconnect with Guardian in Joliet. The applicants will then utilize their existing capacity on Guardian to deliver the gas withdrawn from storage to their local distribution systems.

### **Applicants' Economic Analysis**

The applicants conducted an economic analysis of the proposed transaction in which they compared the costs they would incur for long-term access to the Bluewater facility and the associated transportation arrangements with the costs they would incur using their traditional portfolios of services contracted on a shorter-term basis. The applicants assumed that the cost of operating and maintaining the Bluewater facility will escalate at the same rate as the cost of shorter-term cost-based and market-based services. This is a conservative assumption because, as noted above, the Bluewater facility is relatively new and should not need the same level of investment to modernize and comply with new safety and environmental requirements that older storage facilities in the Midwest, including the majority of ANR's facilities, will. Therefore, WEC's acquisition of the Bluewater facility will likely reduce the applicants' exposure to storage cost increases. The savings reflected in the economic analysis are threefold.

First, the cost of long-term access to storage capacity under the BGH service agreements will be lower than the cost of continuing to purchase a similar quantity of cost-based and market-based storage services on a shorter-term basis. The applicants can reduce the level of pipeline "no notice" balancing service they currently purchase. The displacement of winter term supply and the Bluewater facility's enhanced injection capability will provide the applicants with increased daily supply flexibility and, thus, less need for no notice service.

Second, the applicants' long-term access to storage capacity in Michigan will enable them to make long-term commitments to purchase lower cost transportation capacity on the

Vector pipeline. The applicants' ability to decrease their reliance on higher-cost transportation capacity will generate significant savings that will increase over time.

Third, WEC's ownership of the Bluewater facility will provide the applicants the flexibility to optimize their use of the facility in response to market conditions. In addition, BGH generates revenues from sales of gas storage service to third parties, the provision of "park and loan" gas services, and opportunity sales of gas out of storage. Under the storage contracts, these revenues will be passed directly on to the applicants and then to their customers.

Through their access "akin to ownership" of the Bluewater facility, the applicants should be able to achieve cost reductions for their customers from optimizing injections and withdrawals throughout the year. In the applicants' base case, and compared to leasing similar amounts of gas storage and transportation capacity on a shorter-term basis, the proposed transaction will reduce the applicants' purchased gas costs by about \$200 million NPV, based on 60-year storage contract terms. The savings are even greater in the applicants' high storage cost case, and the applicants still realize significant savings in their low storage cost case as well.

### **Commission Determination**

For the numerous reasons discussed above, the Commission finds that it is reasonable and prudent for the applicants to enter the proposed transaction, with the following conditions. Pursuant to their offering, it is reasonable to require the applicants to amend the gas storage contracts to shorten their terms to 30 years. The recovery of the Bluewater investment, however, shall continue to be based on a 60-year depreciable life. This condition mitigates the risk that Commission staff and some of the intervenors expressed with respect to the initially proposed 60-year storage contract term. The Commission recognizes that the facility's economic life may

extend beyond the 60-year depreciable life. Thus, the applicants shall provide to the Commission the results of any future depreciation study.

While the proposed transaction's NPV savings with 30-year storage contract terms will not be as high as with 60-year storage contract terms, the proposed transaction will still generate significant NPV savings. Commission staff's evaluation of the applicants' economic analysis demonstrates that the proposed transaction's NPV is sensitive to operating and capital costs escalation. Accordingly, it is reasonable to require the applicants to amend the gas storage agreements to provide their approval of an annual Bluewater O&M cost budget, which shall be reflected in each of the applicants' annual gas supply plans filed with the Commission. It is further reasonable to require the applicants to submit capital expenditures for the Bluewater facility that exceed \$2.5 million to the Commission for approval, and to amend their gas storage agreements to provide that upon their approval of a significant capital expenditure exceeding \$2.5 million, the applicants' obligation to compensate BGS for the expenditure will be limited to BGS's actual expenditure or the approved amount plus 10 percent, whichever is less. Last, it is reasonable to require the applicants to periodically submit information that will allow Commission staff to verify that the proposed transaction is in fact creating customer savings.

### **Cost Recovery Mechanism**

The applicants also requested that the Commission declare it reasonable and prudent for the applicants to recover the proposed transaction's costs through their PGACs. For the reasons discussed below, the Commission finds that it is reasonable and prudent for the applicants to recover the proposed transaction's transportation contract costs through the applicants' PGACs. However, the Commission finds that it is not reasonable and prudent for the applicants to recover

the proposed transaction's gas storage contract costs through the PGACs indefinitely. Instead, the applicants may recover these costs through their PGACs until their next rate cases, at which time the applicants must subsequently recover these cost through base rates.

### **PGAC Background**

The Commission developed PGACs to correct over-recovery or under-recovery of commodity-related gas costs, which generally include storage and transportation costs (but not plant or other assets) either because of changes in the cost of gas supplies or customer usage was different than anticipated in base rates. *See Order in GCRM Docket, supra*, 1996 WL 34720600, at \*2. Based on the nature of the gas industry in the late 1980s and early 1990s, the Commission developed PGACs because LDCs were seen as price takers without the ability to influence the amount they could pay for gas supplies. *Id.* at \*2-\*7.

Under the Commission's gas cost recovery process, "[t]he price seen on bills by utility customers represent[s] rates for service that have been developed and affected by both ratemaking conventions and gas cost recovery mechanisms [*i.e.*, PGACs]." *Id.* at \*13-\*14. "In regard to ratemaking conventions, the estimated annual gas costs for a utility in a rate case are assigned or allocated to the various customer rate classifications. These assignments and allocations result in the base rates for utility service." *Id.* at \*14. However, gas cost recovery mechanisms, such as PGACs, "recover the differences between the estimates used in developing the base cost of gas rates and the actual gas costs that are relevant to the current monthly gas volumes actually acquired and used to provide customer service." *Id.*

To effectuate the gas cost recovery process, the Commission requires public utilities to submit gas supply plans for Commission approval. *See, e.g., id.* at \*20. The Commission has

found this to be “a reasonable means for assessing a [public] utility’s entire portfolio.” *Id.* at \*38. Gas supply plans must include, among other things, volume and cost-related data on pipeline and storage facility capacity contracts. *Id.* Costs incurred in accordance with approved gas supply plans will be passed on to ratepayers. *Id.* at \*22. As such, changes in these forecasts must obtain Commission approval. *Id.* at \*39. Cost increases not included in an approved gas supply plan may not pass through PGACs until approved. *Id.* at \*40.

In sum, the average base cost of gas is determined during a public utility’s rate case. The source of supply, throughput data, and the purchased gas to sales ratio are derived from the public utility’s most recently approved gas supply plan. When the public utility’s cost of natural gas supply or sales data changes from the estimates reflected in the base average gas costs, new rates for average gas costs are calculated and the cost difference is recovered through the PGAC.

### **Criteria for Developing and Using PGACs**

Based on an evolution of the gas industry since the late 1980s and early 1990s when the Commission developed PGACs, LDCs can now exercise a level of control over the price they pay for gas supplies. Thus, the Commission has established a number of criteria for gas utilities’ development and use of gas cost recovery mechanisms. First, reliable service must be maintained under any acceptable gas cost recovery mechanisms. *Id.* at \*10. Second, the sharing of risk and reward should be balanced between shareholders and ratepayers. *Id.* at \*11. Third, the operation of gas cost recovery mechanisms should provide appropriate price signals. *Id.* at \*13. Fourth, the operation of gas cost recovery mechanisms should not unduly hinder the transition to workable markets. *Id.* at \*14. Fifth, the operation of gas cost recovery mechanisms should be designed to achieve the lowest reasonable cost of gas to its customers via the

submission of gas supply plans. *Id.* at \*16. Sixth, the Commission must have detailed and timely information in order to carry out its regulatory responsibilities. *Id.* at \*17. Finally, gas cost recovery mechanisms should minimize the need for retrospective review of utility transactions. *Id.* at \*18. The applicants stated that the proposed transaction's costs should be recovered through their PGACs because their existing BGH contracts are recovered through their PGACs and that the proposed transaction meets the guiding principles noted above.

([PSC REF#: 299839](#), confidential; [PSC REF#: 299840](#), public.)

### **Applicants' Basis for Recovery of the Proposed Transaction's Costs Through PGACs**

First, the applicants stated that recovery through their PGACs provides reliable service at reasonable costs because it provides: (1) significant, positive NPV; (2) long-term certainty akin to ownership; (3) operational access to market-area storage; and (4) access to long-term storage service at expected savings. Second, the applicants stated recovery through their PGACs shares risk and reward among shareholders and ratepayers. In particular, the applicants stated that shareholders forego the opportunity to invest capital elsewhere for 60 years, while ratepayers acquire storage facilities at costs consistent with other utility investments. The applicants further stated that additional significant capital investment will be subject to Commission review, and that the potential for opportunity sales will accrue to ratepayers, not shareholders. Third, the applicants stated that recovery through their PGACs will provide timely and appropriate price signals to customers because the method of pricing working gas in storage will not change and that monthly PGAC filings and true-ups will facilitate prompt pricing adjustments. Fourth, for these same reasons, the applicants stated that recovery through their PGACs will not thwart the development of workable competitive markets. Fifth, the applicants stated that submitting the

required gas supply plans will allow the Commission to determine whether the operation of the gas cost recovery mechanisms are operated in a way to achieve the lowest reasonable cost of gas.

Sixth, the applicants stated that they will provide the Commission with detailed, timely, consistent, and standardized information through the required PGAC reporting. Last, the applicants stated that the Commission's issuance of the requested declaratory rulings will achieve the goal that operation of gas cost recovery mechanisms should minimize the need for retrospective reviews of utility transactions.

### **Commission Determination**

The Commission finds that recovering the proposed transaction's transportation contract costs through the applicants' PGACs is reasonable based on the applicants' current practice of recovering similar transportation contract costs in their PGACs. The lengths of the proposed transaction's transportation contracts are not unreasonable, and in past gas supply plans, the Commission has approved the use of both short- and long-term transportation contracts. Currently, WE-GO, WG, and WPSC have short- and long-term storage transportation contracts with other companies ranging from 1 to 18 years in length. In addition, several other Wisconsin gas utilities have long-term storage transportation contracts ranging from 10 to 29 years in length. Further, the current and expected pricing of the transportation capacity needed to inject and withdraw natural gas in and out of storage via the Vector and Guardian pipelines is significantly lower than ANR's tariffed transportation service.

However, the Commission finds that it is not reasonable to recover the gas storage agreements through the PGACs indefinitely because such recovery does not appropriately balance risk and reward among shareholders and ratepayers. If the applicants are permitted to

recover the gas storage contracts on a one-for-one basis through their PGACs, the applicants' ratepayers bear all the risk associated with the contracts. The applicants would be guaranteed recovery of all charges incurred under the gas storage contracts regardless of how the market may change, and the ratepayers would be required to pay for such contracts even if they prove uneconomic in the future. Recovery of gas storage agreement costs through base rates more appropriately balances risk and reward among shareholders and ratepayers. Including these gas storage contract costs in base rates does not guarantee full recovery of all costs, but would allow the applicants a reasonable opportunity to recover prudently incurred costs under their contracts with BGS. The reward is that the applicants are allowed to retain any opportunity sales or benefits from increased sales or other cost savings. The risk to the applicants would result from the potential for decreased sales and unanticipated expenses, which may prohibit the applicants from fully recovering costs. Two WEC subsidiaries currently own underground storage facilities, the Manlove Field and the Partello Field. (See [PSC REF#: 297634](#) at 17.) These storage facilities and the associated base gas are treated as rate-based assets, and the costs associated with them are recovered through state (Michigan and Illinois) rate case processes. Likewise, the O&M expenses incurred relative to these facilities are recovered in base rates.

Similarly, the applicants previously proposed in a rate case to recover the carrying cost of gas-in-storage through their PGACs, which would guarantee earning the authorized return on associated investment in stored natural gas. See *In re Wis. Elec. Power Co.*, docket no. 5-UR-103, 2008 WL 294759, at \*57 (Pub. Serv. Comm'n of Wis. Jan. 17, 2008). The applicants asserted that with "volatility in the natural gas market, it is unreasonable to hold the utility and its shareholders responsible for changes in the carrying costs on the gas inventory when the PGA[C]



mechanism could be used to accommodate fluctuations in natural gas costs and inventory levels.” *Id.* The Commission denied the request, holding that it was inconsistent with: (1) prior Commission decisions denying similar requests for the applicants; and (2) the Commission’s findings in the *Order in GCRM Docket*. 2008 WL 294759 at \*58. The Commission noted that LDCs could “no longer claim to be mere ‘price takers’ but rather must be viewed as players whose expertise, judgment, and dedication are able to significantly affect the delivered price they pay for gas supplies.” *Id.* (quoting *Order in GCRM Docket, supra*, 1996 WL 34720600, at \*6.) The Commission required the applicants to recover the carrying cost of gas-in-storage through margin (base) rates given their forward-looking nature. 2008 WL 294759 at \*58.

The total costs that would be included in base rates would be the current base reservation charge, actual known true-up cost, and the test-year forecasted true-up expenses. The applicants anticipate beginning to incur costs under the gas storage contracts in the short term. Currently, the applicants have filed for a base rate freeze for gas rates through 2019. ([PSC REF#: 300739](#); [PSC REF#: 300749](#).) It is therefore reasonable for the costs incurred under the gas storage agreements be recovered through their PGACs until their next base rate case, at which time they will be placed in base rates. Recovering the costs through the PGAC until the next rate case also allows the applicants to gain operational experience without risk of under-recovery.

### **Recovery from Certain Customer Classes**

The applicants propose to initially recover the cost of the proposed transaction from sales customers. WIEG requested that the applicants only recover the proposed transaction’s costs from sales customers, not transportation customers, because the applicants have not demonstrated that the proposed transaction will provide storage to transportation customers, nor

have they demonstrated that the proposed transaction is an economic storage alternative for transportation customers that have market-based storage options available. While the Commission finds WIEG's points to be valid, the applicants have also indicated that the proposed transaction could benefit transportation customers in the future. For this reason, the Commission finds it reasonable for the applicants to recover the proposed transaction's costs only from sales customers for now, but the Commission leaves open the possibility for the applicants to recover the proposed transaction's costs from transportation customers in the future.

### **Order**

1. As conditioned by this Final Decision, it is reasonable and prudent for the applicants to enter into the long-term storage service and interstate gas transportation agreements based on the facts established in the Background and Opinion sections of this Final Decision.
2. The declaratory rulings issued in this Final Decision are strictly based on the set of facts established in this proceeding, are only valid to the extent that the set of facts remains in place, and are void to the extent that the set of facts changes.
3. The applicants shall include provisions in the storage service agreements stating that the applicants have entered into them with their affiliate BGS or BGH voluntarily.
4. The applicants are prohibited from asserting that the Commission is preempted from assessing the reasonableness and prudence of the applicants' decision to enter the service storage agreements with BGS or BGH or related matters in the future.

5. The applicants are required to file with the Commission the storage service agreements with their affiliate BGS or BGH and obtain approval from the Commission under Wis. Stat. § 196.52.

6. The applicants shall amend the gas storage contracts to shorten the term to 30 years. The recovery of the Bluewater investment shall continue to be based on a 60-year depreciable life.

7. The applicants shall amend the gas storage agreements to provide their approval of an annual Bluewater O&M cost budget, which shall be reflected in each of the applicants' annual gas supply plans filed with the Commission.

8. The applicants shall submit capital expenditures for the Bluewater facility that exceed \$2.5 million to the Commission for approval and shall amend their gas storage agreements to provide that upon their approval of a significant capital expenditure exceeding \$2.5 million, the applicants' obligation to compensate BGS for the expenditure will be limited to BGS's actual expenditure or the approved amount plus 10 percent, whichever is less.

9. The applicants shall periodically submit information that will allow Commission staff to verify that the proposed transaction is in fact creating customer savings.

10. The applicants shall recover their costs incurred under the gas storage agreements through their PGACs until their next base rate case, which at that time the costs shall be placed in base rates.

11. The applicants shall recover the proposed transaction's costs only from sales customers now, but the Commission retains the authority to require the applicants to recover costs from transportation customers in the future.

**Dissent**

Commissioner Roberts dissents and writes separately (see attached).

Dated at Madison, Wisconsin, this 29<sup>th</sup> day of June, 2017.

By the Commission:

A handwritten signature in black ink, appearing to read "Sandra J. Paske", with a stylized, flowing script.

Sandra J. Paske  
Secretary to the Commission

SJP:ev:DL:01549243

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN  
610 North Whitney Way  
P.O. Box 7854  
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE  
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE  
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

*PETITION FOR REHEARING*

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

*PETITION FOR JUDICIAL REVIEW*

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.<sup>6</sup> The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

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<sup>6</sup> See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

**APPENDIX A**

**CONTACT LIST FOR SERVICE BY PARTIES**

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Docket 5-DR-112

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## **PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of Wisconsin Electric Power Company, Wisconsin Gas LLC,  
and Wisconsin Public Service Corporation for Declaratory Ruling and  
Approval Regarding Long-Term Natural Gas Storage and Transportation  
Arrangements

5-DR-112

### **DISSENT OF COMMISSIONER LON ROBERTS**

I respectfully dissent from the Commission's decision to issue the declaratory ruling, as I would have declined to issue the requested declaratory ruling. When the Commission decided to open this docket in March 2017, I was personally interested in learning more about the proposed transaction. I believe the Commission made the right decision to open the docket at the time, but since learning more about the proposed transaction, I would have declined to issue the declaratory ruling for several different reasons.

First, purely from a policymaking perspective, I believe that determining the reasonableness and prudence of the proposed transaction in the context of this declaratory ruling is less appropriate than making such a determination in either a rate case, gas supply plan proceeding, or affiliated interest proceeding. The applicants [Wisconsin Electric Power Company (WEPCO), Wisconsin Gas LLC and Wisconsin Public Service Corporation (WPSC)] sought a declaratory ruling regarding the reasonableness and prudence of entering long-term transportation and storage contracts with their potential affiliate prior to WEC Energy Group, Inc. (WEC), acquiring Bluewater in order to obtain cost recovery assurances for WEC. Stated another way, under the guise of asking the Commission whether it is reasonable and prudent for the applicants to enter into long-term storage and transportation contracts if WEC purchases



Bluewater, the question that is really being asked is should WEC acquire Bluewater. Only then—after any such acquisition—is the question presented ripe for the Commission’s adjudication. It is undisputed, however, that WEC does not require any Commission approval prior to acquiring the unregulated Bluewater. I would have therefore required WEC to rely on its business judgment to make that business decision. While the applicants asserted that the Commission issues approvals for utilities to construct or acquire utility plant, such as the Riverside facility, such approvals are required under Wisconsin law. No such approval is required here because it is WEC—not the applicants—that is proposing to purchase the Bluewater facility. Further, these construction or acquisition approvals required under Wisconsin law do not constitute determinations of prudence or rate recovery. The Commission’s discussion of prudence and rate recovery in the decision approving the Riverside facility made clear that such approval did not constitute a determination of prudence or rate recovery. *See App. of Wis. Power & Light Co. for a Certificate of Public Convenience and Necessity to Build an Approximately 650 Megawatt Natural Gas-Fueled Power Plant at its Riverside Energy Center Facility in the Town of Beloit, Rock County, Wisconsin*, Docket No. 6680-CE-176, 2016 WL 2825926, at \*16-\*18 (Pub. Serv. Comm’n of Wis. May 6, 2016). Even if issuing an approval for utilities to construct or acquire plant did constitute a determination of prudence, the case on which the applicants rely makes clear that Wisconsin law does not necessarily guarantee that all prudent expenditures are entitled to rate recovery. *Wis. Pub. Serv. Corp. v. Pub. Serv. Comm’n of Wis.*, 109 Wis. 2d 256, 325 N.W.2d 867 (1982). There, the court stated that “[w]e do not have before us and we do not decide the issue of whether prudent expenditures are always recoverable from ratepayers.” *Id.* at 265. Rather, “prudence is a factor the [Commission]

considers in setting utility rates.” *Wis. Pub. Serv. Corp. v. Pub. Serv. Comm’n of Wis.*, 156 Wis. 2d 611, 616, 457 N.W.2d 502 (Ct. App. 1990). Of course, another factor the Commission considers is whether the acquired or constructed plant is “used and useful.” *Wis. Tel. Co. v. Pub. Serv. Comm’n of Wis.*, 232 Wis. 274, 341-48, 287 N.W. 122 (1939). It is lastly worth mentioning that any utility acquisition or construction decision is entitled to a presumption of prudence. *In re Wis. Power & Light Co.*, Docket No. 6680-UR-110, 2001 WL 969109 (Pub. Serv. Comm’n of Wis. June 19, 2001).

While the proposed transaction may present the potential for ratepayer benefits, I would have declined to provide assurances to WEC where the claimed benefits of the proposed transaction may not materialize. If those benefits do not materialize, the burden would fall entirely on the ratepayers under the structure of the proposed transaction. Importantly, this burden would not necessarily fall entirely on ratepayers if the applicants were acquiring Bluewater directly. Balancing risk and reward appropriately is necessary to any contractual relationship, especially one with an affiliated party implicating captive ratepayers. The applicants did not adequately demonstrate that they have achieved that balance under the structure of the proposed transaction. I appreciate that the applicants have proposed several conditions in an attempt to strike a better balance, but I do not believe they went far enough and do not balance risk between shareholders and ratepayers.

Second, I believe the Commission has several clear paths for reviewing the reasonableness and prudence of any decision by the applicants to enter long-term transportation and storage contracts with their affiliate in the event that WEC does in fact acquire Bluewater. Depending on the appropriate method of cost recovery, the traditional manner for such review

would be in the context of a gas supply plan case or rate case. In a gas supply plan case, Commission staff reviews a utility's entire portfolio of gas supply and evaluates the reasonableness and prudence of a particular component based on the totality of the circumstances. The Commission could also review the reasonableness and prudence of the applicants' decision in a rate case. Assessing the reasonableness and prudence of utility investment is one of the hallmark functions this Commission performs in determining the revenue requirement and setting rates.

Further, where the storage contracts would be affiliated interest agreements, the applicants would be required to obtain Commission approval under Wis. Stat. § 196.52. While I recognize that the Commission may not necessarily pass judgment on the justness and reasonableness of the rate contained in the storage contract, the Commission may evaluate the reasonableness and prudence of entering into the storage contracts with their affiliate. As the applicants are well aware, the Commission recently approved in Docket No. 5-AE-208 the purchase power agreement between WEPCO and WPSC under Wis. Stat. § 196.52 without passing judgment on the justness and reasonableness of the Federal Energy Regulatory Commission (FERC) approved contract rate. *See App. of Wis. Pub. Serv. Corp. and Wis. Elec. Power Co. for Approval of Affiliated Interest Agreements and Fuel Rate Treatment Related to a Capacity-Only Transaction to Ensure Wis. Pub. Serv. Corp. Resource Adequacy Requirements in Lieu of Building Additional Generation*, Docket No. 5-AE-208, 2017 WL 2311172 (Pub. Serv. Comm'n of Wis. May 24, 2017). Whether an affiliated interest agreement is reasonable and consistent with the public interest involves more than reviewing the rate. Indeed, the Commission routinely includes language in its orders approving affiliated interest agreements

stating that such approval does not constitute a determination that the rate is just and reasonable. This would be the case with these affiliated interest agreements as well, and it appears that the applicants have conceded, at least with respect to the decision to initially enter into the storage contracts, that the Commission has authority under Wis. Stat. § 196.52.

Not only does the Commission's authority under Wis. Stat. § 196.52 extend over the utility's initial decision to enter an affiliated interest agreement, but the statute also expressly provides that the Commission "shall have continuing supervisory control over the terms and conditions of contracts and arrangements under this section as necessary to protect and promote the public interest." As legal commentary makes clear, this provision is intended to "meet the possibility of initial misjudgment or of economic change." *Legislation Extending Control Over Public Utility-Affiliate Contracts*, 45 Harv. L. Rev. 729, 733 (1932). The statute also expressly states that "Commission approval of a contract or arrangement under [Wis. Stat. § 196.52] shall not preclude disallowance or disapproval of a payment under the contract or arrangement if upon actual experience under the contract or arrangement it appears that the payments provided for or made were or are unreasonable." Evaluating a utility's decision to enter a FERC approved contract after it has been entered would not implicate federal law. One of the cases on which the applicants rely in support of the Commission's authority to issue the declaratory ruling, *Kentucky West Virginia Gas Co.*, 837 F.3d 600 (3d Cir. 1988), involved a state commission disallowing costs incurred by a retail gas utility purchasing under a FERC approved contract. The court stated that a state commission "may legitimately inquire into whether the retailer prudently chose to pay the FERC-approved wholesale rate of one source, as opposed to the lower rate of another source." *Id.* This inquiry can occur "without impugning the reasonableness of the wholesale

rate.” *Id.* Together, these sources provide support for the Commission’s authority to reevaluate the reasonableness and prudence of the applicants’ decision to enter the storage contracts. Such reevaluation is plainly a matter of state law, not federal law.

Despite the applicants’ protest to various conditions, the Commission also has the authority to reopen any order under Wis. Stat. § 196.39, regardless of whether that order is a declaratory ruling, a rate order, or an order under Wis. Stat. § 196.52. The plain language of Wis. Stat. § 196.39(1) is extremely broad and provides, in its entirety, that “[t]he [C]ommission at any time, upon notice to the public utility and after opportunity to be heard, may rescind, alter or amend any order fixing rates, tolls, charges or schedules, or any other order made by the [C]ommission, and may reopen any case following the issuance of an order in the case, for any reason.” It is also well-established that under Wis. Stat. § 196.395, the Commission has broad authority to issue conditional orders. When an order is issued upon certain conditions, any party acting upon any part of the order is deemed to have accepted and waived all objections to any condition contained in the order.

Third, I am uncomfortable with the term of the proposed transaction. While I appreciate the applicants’ willingness to move to a shorter, 30-year term, that does not go far enough. As Commission staff noted, the longer the contract term, the greater the financial risk to the applicants, and in turn, their ratepayers. No matter how robust the applicants’ economic model may have been, even a 30-year term presents certain challenges. The natural gas industry has undergone significant changes in the past 60 years, from regulatory, economic, and engineering perspectives. I am uncomfortable approving a proposed transaction based on modeling that does

not, and perhaps cannot, account for the same type of disruptive industry changes. Even a 30-year term for the proposed transaction is too long.

Through the requested declaratory rulings, the applicants have sought to take a proactive approach to managing their gas supply portfolio, which I believe is important. Indeed, I have recently expressed an interest in the Commission's approach to overseeing utility management of gas supply portfolios. While the proposed transaction is intended to serve as a hedge, the manner in which it is structured does not balance risk and reward equally among ratepayers and shareholders. Based on that and the length of the contract term of the proposed transaction, I would have declined to issue the declaratory ruling. The decision would not have, however, ceded the Commission's ratemaking authority or authority under Wis. Stat. § 196.52 over any contracts the applicants may enter. The decision to issue a declaratory ruling is entirely discretionary, and where WEC requires no approval to acquire Bluewater, the requested declaratory ruling appears to seek assurance for WEC. On the other hand, the Commission protects the ratepayers through its ratemaking authority and authority under Wis. Stat. § 196.52, not through the declaratory ruling process.

The action taken today in this docket runs the risk that a future Commission wishing to evaluate alternatives to these storage arrangements or adjust cost recovery will, as a result of this predetermination of reasonableness and prudence, be limited by and possibly estopped from taking actions necessary to address initial misjudgments and future economic changes notwithstanding the Commission's general authority otherwise available to it to take action in a gas supply plan proceeding and rate case or to exercise its authority to review, approve, and continue to supervise affiliated interest agreements.